

ORDINANCE NO. **97563**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF "CITY OF SAN ANTONIO, TEXAS, MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, SERIES 2003"; PLEDGING THE REVENUES OF THE DRAINAGE UTILITY SYSTEM TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE, PAYMENT, SECURITY AND DELIVERY OF SAID BONDS, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A PURCHASE CONTRACT; COMPLYING WITH THE REQUIREMENTS IMPOSED BY THE LETTER OF REPRESENTATIONS PREVIOUSLY EXECUTED WITH THE DEPOSITORY TRUST COMPANY, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE UPON PASSAGE BY EIGHT AFFIRMATIVE VOTES**

WHEREAS, pursuant to authority conferred by Subchapter C of Chapter 402 of the Texas Local Government Code, as amended (the "*Act*") the City Council (the "*City Council*") of the City of San Antonio, Texas (the "*City*") held public hearings on the creation of a municipal drainage utility system and adopted Ordinance No. 86711 on September 25, 1997 establishing and declaring the creation of the City of San Antonio Municipal Drainage Utility (the "*Municipal Drainage Utility System*" or "*System*") within the municipal boundaries and unincorporated extraterritorial jurisdiction of the City;

WHEREAS, the initial establishment of the System pursuant to the ordinance adopted by the City on September 25, 1997 has been validated pursuant to the provisions of Section 51.003, as amended, Texas Local Government Code because three years have passed, no lawsuit to annul or invalidate this Ordinance has been filed as of the date hereof, and Section 51.003(b), as amended, Texas Local Government Code is not applicable;

WHEREAS, the City Council of the City has determined that revenue bonds (the *Bonds*) payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Revenues (hereinafter defined) of the City's System should be issued for the purposes disclosed in Section 1 hereof; and

WHEREAS, the City is empowered by the provisions of the Act and the City's Home Rule Charter to issue the Bonds; and

WHEREAS, the City Council hereby finds and determines that all of the Bonds should be issued and sold at this time; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Revenue bonds of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$44,150,000 to be designated and bear the title “CITY OF SAN ANTONIO, TEXAS MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, SERIES 2003” (hereinafter referred to as the “*Bonds*”), to finance the costs of drainage improvements, including the acquisition, construction and repair of structures, equipment and facilities for the City’s Municipal Drainage Utility System, in conformity with the Constitution and laws of the State of Texas, including Section 402.051, Texas Local Government Code, as amended.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Date. The Bonds shall be issued in fully registered form only; shall be dated May 1, 2003 (the “*Bond Date*”); shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity); and shall become due and payable on February 1 in each of the years and in principal amounts (the “*Stated Maturities*”) and bear interest on the unpaid principal amounts from the Bond Date, or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, at the per annum rates, while Outstanding (hereafter defined) in accordance with the following schedule:

| <u>Years of<br/>Stated Maturity</u> | <u>Principal<br/>Amounts (\$)</u> | <u>Interest<br/>Rates (%)</u> |
|-------------------------------------|-----------------------------------|-------------------------------|
| 2004                                | 1,035,000                         | 2.000%                        |
| 2005                                | 1,065,000                         | 3.500%                        |
| 2006                                | 1,100,000                         | 3.500%                        |
| 2007                                | 1,140,000                         | 3.500%                        |
| 2008                                | 1,185,000                         | 4.000%                        |
| 2009                                | 1,230,000                         | 4.000%                        |
| 2010                                | 1,280,000                         | 4.000%                        |
| 2011                                | 1,335,000                         | 4.500%                        |
| 2012                                | 1,400,000                         | 4.500%                        |
| 2013                                | 1,460,000                         | 4.000%                        |
| 2014                                | 1,520,000                         | 4.000%                        |
| 2015                                | 1,580,000                         | 4.000%                        |
| 2016                                | 1,645,000                         | 4.000%                        |
| 2017                                | 1,715,000                         | 4.000%                        |
| 2018                                | 1,790,000                         | 5.000%                        |
| 2019                                | 1,885,000                         | 5.000%                        |
| 2020                                | 1,980,000                         | 5.000%                        |
| 2021                                | 2,080,000                         | 5.000%                        |
| 2022                                | 2,190,000                         | 5.000%                        |
| xxxx                                | xxxxxxxx                          | x.xxx                         |
| 2025                                | 7,220,000                         | 4.625%                        |
| xxxx                                | xxxxxxxx                          | x.xxx                         |

| <u>Years of<br/>Stated Maturity</u> | <u>Principal<br/>Amounts (\$)</u> | <u>Interest<br/>Rates (%)</u> |
|-------------------------------------|-----------------------------------|-------------------------------|
| 2028                                | 8,315,000                         | 4.750%                        |

SECTION 3: Payment of Bonds - Paying Agent/ Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable, without exchange or collection charges to the Holder (as hereinafter defined), appearing on the registration and transfer books maintained by the Paying Agent/Registrar (hereinafter defined), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and such payment of principal of, premium, if any, and interest on the Bonds shall be without exchange or collection charges to the Holder of the Bonds.

The Bonds shall bear interest on the unpaid principal amount thereof at the per annum rates established in Section 2, computed on the basis of a 360-day year of twelve 30-day months, and interest thereon shall be payable on February 1 and August 1 of each year (the *Interest Payment Date*) commencing August 1, 2003, while the Bonds are Outstanding.

The selection and appointment of The Bank of New York Trust Company of Florida, N.A., Jacksonville, Florida to serve as the initial Paying Agent/Registrar (the *Paying Agent/Registrar*) for the Bonds is hereby approved and confirmed, and the City agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached hereto in substantially final form as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The City covenants to maintain and provide a Paying Agent/Registrar at all times while the Bonds are Outstanding, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution, or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and shall be authorized by law to serve as a Paying Agent/Registrar.

The City reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or ordinance terminating such agency. Additionally, the City agrees to promptly cause a written notice of this substitution to be sent to each Holder of the Bonds by United States mail, first-class postage prepaid, which notice shall also give the address of the corporate office of the successor Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable only to the registered owner of the Bonds (the *Holder* or *Holders*) appearing on the Security Register maintained on behalf of the City by the Paying Agent/Registrar as hereinafter provided (i) on the Record Date (hereinafter defined) for purposes of paying interest thereon, (ii) on the date of surrender of the Bonds for purposes of receiving payment of principal thereof upon redemption of the Bonds or at the Bonds' Stated Maturity, and (iii) on any date for any other purpose. The City and the Paying

Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Bond for purposes of receiving payment and all other purposes whatsoever, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Bonds shall be payable only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its corporate trust office. Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the fifteenth day of the month next preceding an Interest Payment Date for the Bonds (the *Record Date*) and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, by the Paying Agent/Registrar, to the address of the Holder appearing in the Security Register, or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder's risk and expense.

If the date for the payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Bonds was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date*--which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

#### SECTION 4: Redemption.

A. Mandatory Redemption. The Bonds stated to mature on February 1, 2025 and February 1, 2028 are referred to herein as the "Term Bonds". The Term Bonds are subject to mandatory sinking fund redemption prior to their stated maturities from money required to be deposited in the Bond Fund for such purpose and shall be redeemed in part, by lot or other customary method, at the principal amount thereof plus accrued interest to the date of redemption in the following principal amounts on February 1 in each of the years as set forth below:

Term Bonds  
Stated to Mature  
on February 1, 2025

| <u>Year</u> | <u>Principal<br/>Amount (\$)</u> |
|-------------|----------------------------------|
| 2023        | \$2,295,000                      |
| 2024        | 2,405,000                        |
| 2025        | 2,520,000*                       |

Term Bonds  
Stated to Mature  
on February 1, 2028

| <u>Year</u> | <u>Principal<br/>Amount (\$)</u> |
|-------------|----------------------------------|
| 2026        | \$2,640,000                      |
| 2027        | 2,770,000                        |
| 2028        | 2,905,000*                       |

\*Payable at Stated Maturity.

The principal amount of a Term Bond required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the City, by the principal amount of any Term Bonds of such Stated Maturity which, at least 50 days prior to the mandatory redemption date (1) shall have been defeased or acquired by the City and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with money in the Bond Fund, or (3) shall have been redeemed pursuant to the optional redemption provisions set forth below and not theretofore credited against a mandatory redemption requirement.

B. Optional Redemption. The Bonds having Stated Maturities on and after February 1, 2014 shall be subject to redemption prior to Stated Maturity, at the option of the City, on February 1, 2013, or on any date thereafter, as a whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/ Registrar), at the redemption price of par plus accrued interest to the date of redemption.

C. Exercise of Redemption Option. At least forty-five (45) days prior to a date for the redemption of Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem Bonds, the principal amount of each Stated Maturity to be redeemed, and the date set for the redemption thereof. The decision of the City to exercise the right to redeem Bonds shall be entered in the minutes of the governing body of the City.

D. Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall select at random and by lot the Bonds to be redeemed, provided that if less than the entire principal amount of a Bond is to be redeemed, the Paying Agent/Registrar shall treat such Bond then subject to redemption as representing the number of Bonds outstanding which is obtained by dividing the principal amount of such Bond by \$5,000.

E. Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, a notice of redemption shall be sent by United States mail, first class postage prepaid, in the name of the City and at the City's expense, by the Paying Agent/Registrar, to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of

mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the corporate trust office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. This notice may also be published once in a financial publication, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, *The Bond Buyer* and *The Wall Street Journal*), or in the State of Texas (including, but not limited to, *The Texas Bond Reporter*). Additionally, this notice may also be sent by the City to any registered securities depository and to any national information service that disseminates redemption notices.

If a Bond is subject by its terms to redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Bond (or the principal amount thereof to be redeemed) so called for redemption shall become due and payable, and if money sufficient for the payment of such Bonds (or of the principal amount thereof to be redeemed) at the then applicable redemption price is held for the purpose of such payment by the Paying Agent/Registrar, then on the redemption date designated in such notice, interest on the Bonds (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue and such Bonds shall not be deemed to be Outstanding hereunder.

F. Transfer/Exchange of Bonds. Neither the City nor the Paying Agent/Registrar shall be required (1) to transfer or exchange any Bond during a period beginning forty-five (45) days prior to the date fixed for redemption of the Bonds or, (2) to transfer or exchange any Bond selected for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond which is subject to redemption in part.

SECTION 5: Execution - Registration. The Bonds shall be executed on behalf of the City by its Mayor under the seal of the City reproduced or impressed thereon and attested by its City Clerk (or Acting City Clerk as appropriate). The signature of either officer on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who were, at the time of the Bond Date, the proper officers of the City shall bind the City, notwithstanding that such individuals or either of them shall cease to hold such offices prior to the delivery of the Bonds to the Purchasers (hereinafter defined), all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 8C, executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate

of registration substantially in the form provided in Section 8D, executed by the Paying Agent/Registrar by manual signature, and either such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified or registered and delivered.

**SECTION 6: Registration - Transfer - Exchange of Bonds - Predecessor Bonds.** A Security Register relating to the registration, payment, transfer, or exchange of the Bonds shall at all times be kept and maintained by the City at the corporate trust office of the Paying Agent/Registrar, and the Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each Holder, or, if appropriate, the nominee thereof, of the Bonds issued under and pursuant to the provisions of this Ordinance. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond at the corporate trust office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds executed on behalf of, and furnished by, the City of authorized denominations and having the same Stated Maturity and of a like interest rate and aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the corporate trust office of the Paying Agent/ Registrar. Whenever any Bonds are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds executed on behalf of, and furnished by, the City to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the corporate trust office of the Paying Agent/Registrar, or be sent by United States registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered upon such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds", evidencing all or a portion, as the case may be, of the same obligation evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Bonds shall include any Bond registered

and delivered pursuant to Section 21 in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

SECTION 7: Initial Bond(s). The Bonds herein authorized shall be initially issued either (i) as a fully registered bond in the total principal amount of \$44,150,000 with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as one (1) fully registered Bond for each year of Stated Maturity in the applicable principal amount, interest rate, and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the “*Initial Bond(s)*”) and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s) to the initial purchaser(s), the Paying Agent/Registrar, upon written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8: Forms.

A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Bonds are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistent herewith, be established by the City or determined by the officers executing the Bonds as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The Bonds shall be printed, lithographed, or engraved, or produced in any other similar manner, all as determined by the officers executing the Bonds as evidenced by their execution thereof, but the Initial Bond(s) submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

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B. Form of Definitive Bond.

REGISTERED  
NO. \_\_\_\_\_

REGISTERED PRINCIPAL  
AMOUNT  
\$ \_\_\_\_\_

United States of America  
State of Texas  
County of Bexar  
CITY OF SAN ANTONIO, TEXAS  
MUNICIPAL DRAINAGE UTILITY SYSTEM  
REVENUE BONDS  
SERIES 2003

Bond Date:  
May 1, 2003

Interest Rate:

Stated Maturity:

CUSIP No.

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of San Antonio, Texas (hereinafter referred to as the “City”), a body corporate and municipal corporation in Bexar County, State of Texas, for value received hereby promises to pay to the order of the Registered Owner named above (the “Holder”), or the registered assigns thereof, solely from the revenues hereinafter identified, on the Stated Maturity date specified above the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof (computed on the basis of a 360-day year of twelve 30-day months) from the Bond Date specified above, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the per annum rate of interest specified above; such interest being payable on February 1 and August 1 of each year (the “Interest Payment Date”), commencing August 1, 2003.

Principal and premium, if any, of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof, upon its presentation and surrender at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the “Security Register” maintained by the Paying Agent/ Registrar at the close of business on the “Record Date”, which is the fifteenth day of the month next preceding the Interest Payment Date and interest shall be paid by the Paying Agent/ Registrar by check sent United States mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or

currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$44,150,000 (herein referred to as the “*Bonds*”) to finance the costs of drainage improvements, including the acquisition, construction and repair of structures, equipment and facilities for the City’s Municipal Drainage Utility System, under and in strict conformity with the Constitution and laws of the State of Texas, including Section 402.051, as amended, Texas Local Government Code, and pursuant to an Ordinance adopted by the governing body of the City (herein referred to as the “*Ordinance*”).

The Bonds stated to mature on February 1, 2025 and February 1, 2028 are referred to herein as the “Term Bonds”. The Term Bonds are subject to mandatory sinking fund redemption prior to their stated maturities from money required to be deposited in the Bond Fund for such purpose and shall be redeemed in part, by lot or other customary method, at the principal amount thereof plus accrued interest to the date of redemption in the following principal amounts on February 1 in each of the years as set forth below:

Term Bonds  
Stated to Mature  
on February 1, 2025

| <u>Year</u> | <u>Principal<br/>Amount (\$)</u> |
|-------------|----------------------------------|
| 2023        | \$2,295,000                      |
| 2024        | 2,405,000                        |
| 2025        | 2,520,000*                       |

Term Bonds  
Stated to Mature  
on February 1, 2028

| <u>Year</u> | <u>Principal<br/>Amount (\$)</u> |
|-------------|----------------------------------|
| 2026        | \$2,640,000                      |
| 2027        | 2,770,000                        |
| 2028        | 2,905,000*                       |

\*Payable at Stated Maturity.

The principal amount of a Term Bond required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the City, by the principal amount of any Term Bonds of such Stated Maturity which, at least 50 days prior to the mandatory redemption date (1) shall have been defeased or acquired by the City and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with money in the Bond Fund, or (3) shall have been redeemed pursuant to the optional redemption provisions set forth below and not theretofore credited against a mandatory redemption requirement.

The Bonds stated to mature on and after February 1, 2014 may be redeemed prior to their Stated Maturities, at the option of the City, on February 1, 2013, or on any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Bond is subject to redemption prior to stated maturity and is in a

denomination in excess of \$5,000, portions of the principal sum hereof in installments of \$5,000 or any integral multiple thereof may be redeemed, and if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Ordinance for the then unredeemed balance of the principal sum hereof.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption has been duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the City or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part.

The Bonds are special obligations of the City payable solely from and equally and ratably secured by a first lien on and pledge of the Revenues (as defined in the Ordinance) of the City's Municipal Drainage Utility System (as defined in the Ordinance and hereinafter referred to as the "System"). The Bonds do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or the System, except with respect to the Revenues. The Holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

Subject to satisfying the terms and conditions prescribed therefor, the City has reserved the right to issue additional revenue obligations payable from and equally and ratably secured by a parity lien on and pledge of the Revenues of the System, in the same manner and to the same extent as the Bonds.

Reference is hereby made to the Ordinance, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; a description of and the nature and extent of the security for the Bonds, including the Revenues pledged to the payment of the Bonds and the lien and pledge securing the payment of the Bonds; conditions for the issuance of additional revenue obligations; rights and conditions relating to transferability or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; provisions relating to the defeasance and discharge of the liens, pledges, charges and covenants contained in the Ordinance at or prior to the maturity or redemption of this Bond; and for other terms and provisions contained therein. Capitalized terms used herein have the same meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the corporate trust office of

the Paying Agent/Registrar, with the assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of non-payment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "*Special Record Date*") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the City is a duly organized and legally existing municipal corporation under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid special obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by a pledge of and lien on the Revenues of the System as aforestated. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF SAN ANTONIO, TEXAS

\_\_\_\_\_  
Mayor

ATTESTED:

\_\_\_\_\_  
City Clerk

(SEAL)

C. \*Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

|                              |   |                    |
|------------------------------|---|--------------------|
| OFFICE OF THE COMPTROLLER OF | § |                    |
| PUBLIC ACCOUNTS              | § |                    |
|                              | § | REGISTER NO. _____ |
| THE STATE OF TEXAS           | § |                    |

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

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Comptroller of Public Accounts  
of the State of Texas

(SEAL)

\*NOTE TO PRINTER: Do Not Print on Definitive Bonds.

*[The remainder of this page intentionally left blank.]*

D. Form of Certificate of Paying Agent/Registrar to Appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date:

THE BANK OF NEW YORK TRUST  
COMPANY OF FLORIDA, N.A.  
as Paying Agent/Registrar

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

\*NOTE TO PRINTER: Print on Definitive Bonds.

*[The remainder of this page intentionally left blank.]*

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto  
(Print or typewrite name, address, and zip code of transferee): \_\_\_\_\_

(Social Security or other identifying number): \_\_\_\_\_

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration  
thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

NOTICE: The signature on this assignment must  
correspond with the name of the registered owner as it  
appears on the face of the within Bond in every particular.

Signature guaranteed:

\_\_\_\_\_

*[The remainder of this page intentionally left blank.]*



F. The Initial Bond(s) shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Bond shall be modified as follows:

- i. immediately under the name of the bond the headings "Interest Rate \_\_\_\_" and "Stated Maturity \_\_\_\_" shall both be completed "as shown below";
- ii. the first two paragraphs shall read as follows:

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

The City of San Antonio, Texas (the *City*), a body corporate and municipal corporation in the County of Bexar, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above (the *Holder*), or the registered assigns thereof, on the first day of February in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

| <u>Year of Stated Maturity</u> | <u>Principal Amount (\$)</u> | <u>Interest Rate (%)</u> |
|--------------------------------|------------------------------|--------------------------|
|--------------------------------|------------------------------|--------------------------|

(Information to be inserted from  
schedule in Section 2 hereof).

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal installments hereof from the Bond Date at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 1 and August 1 of each year (the *Interest Payment Date*) commencing August 1, 2003.

Principal of this Bond shall be payable to the Holder hereof, upon presentation and surrender, at the corporate trust office of The Bank of New York Trust Company of Florida, N.A., Jacksonville, Florida (the *Paying Agent/Registrar*). Interest shall be payable to the Holder of this Bond whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the fifteenth day of the month next preceding the Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by the Holder hereof at the Holder's risk and expense.

G. Insurance Legend. If bond insurance is obtained by the City or the Purchasers, the Definitive Bonds and the Initial Bond(s) shall bear an appropriate legend as provided by the insurer.

SECTION 9: Definitions. For all purposes of this Ordinance (as defined below), except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined in this Section have the meanings assigned to them in this Section, certain terms used in Section 22 of this Ordinance have the meanings assigned to them in such Section, and all such terms, include the plural as well as the singular; (ii) all references in this Ordinance to designated “Sections” and other subdivisions are to the designated Sections and other subdivisions of this Ordinance as originally adopted; and (iii) the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular Section or other subdivision.

A. The term *Act* shall mean Subchapter C of Chapter 402 of the Texas Local Government Code, as amended, or any successor statute thereof.

B. The term *Additional Bonds* shall mean revenue bonds or other evidences of indebtedness issued or entered into, as the case may be, in the future in accordance with the terms and conditions provided in Section 24 hereof and, by their terms, are equally and ratably secured by a lien on and pledge of the Revenues of the System.

C. The term *Average Annual Debt Service Requirements* shall mean an amount which, at the time of computation, is derived by dividing the total amount of Debt Service Requirements to be paid over a period of years as the same is scheduled to become due and payable by the number of years taken into account in determining the total Debt Service Requirements. Capitalized interest payments provided from bond proceeds shall be excluded in making the aforementioned computation.

D. The term *Bonds* shall mean the “City of San Antonio, Texas Municipal Drainage Utility System Revenue Bonds, Series 2003” authorized by this Ordinance.

E. The term *Bonds Similarly Secured* shall mean collectively, the Bonds and any Additional Bonds.

F. The term *City* shall mean the incorporated municipality known as the City of San Antonio located primarily in Bexar County, Texas.

G. The term *Credit Agreement* shall mean a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase debt, purchase or sale agreements, interest rate swap agreements, or commitments or other contracts or agreements authorized, recognized, and approved by the City as a Credit Agreement in connection with the authorization, issuance, security, or payment of any Bond.

H. The term *Credit Facility* shall mean a policy of insurance or a surety bond, issued by an issuer of policies of insurance insuring the timely payment of debt service on governmental obligations or a letter or line of credit issued by any financial institution whereby the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument.

I. The term *Credit Provider* shall mean any bank, financial institution, insurance company, surety bond provider, or other institution which provides, executes, issues, or otherwise is a party to or provider of a Credit Facility.

J. The term *Debt Service Requirements* shall mean as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest calculated by assuming (i) that the interest rate for every 12-month period on such obligations is equal to the rate of interest reported in the most recently published edition of The Bond Buyer (or its successor) at the time of calculation as the "Revenue Bond Index" or, if such Revenue Bond Index is no longer being maintained by The Bond Buyer (or its successor) at the time of calculation, such interest rate shall be assumed to be 80% of the rate of interest then being paid on United States Treasury obligations of like maturity and (ii) that the principal of such obligations is amortized such that annual debt service is substantially level over the remaining stated life of such obligations, and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

K. The term *Depository* shall mean an official depository bank of the City.

L. The term *Fiscal Year* shall mean the twelve month financial accounting period used by the City in connection with the operation of the System which may be any twelve consecutive month period established by the City.

M. The term *Government Securities*, as used herein, shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America, or (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent; or (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent.

N. The term *Insurance Policy* shall mean the municipal bond guaranty insurance policy issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

O. The term *Insurer* shall mean MBIA Insurance Corporation, or any successor thereto.

P. The term *Interest Payment Date* shall mean the date semiannual interest is payable on the Bonds, being February 1 and August 1 of each year, commencing August 1, 2003, while any of the Bonds remain Outstanding.

Q. The term *Net Revenues* shall mean Revenues of the System, with respect to any period, after deducting the System's Operating and Maintenance Expenses during such period.

R. The term *Operating and Maintenance Expenses* shall mean all current expenses of operating and maintaining the System, including all salaries, labor, materials and administrative costs, allocable under generally accepted accounting principles, to the System. This term shall also include any payments made by the City, or any transfer or allocation of Revenues, to the San Antonio Water System, or any other entity utilized by the City for instream monitoring, sampling, testing and analysis, industrial site inspection, water quality modeling, inspection of illicit connections, legal services and public education relating to the System, to collect the Revenues of the System, or to construct capital improvements to the System for the benefit of the City. Depreciation charges and other costs and disbursements which may be capitalized under generally accepted accounting principles shall not be considered Operating and Maintenance Expenses.

S. The term *Outstanding* when used in this Ordinance with respect to Bonds or Bonds Similarly Secured, as the case may be, means, as of the date of determination, all Bonds Similarly Secured theretofore sold, issued and delivered by the City, except:

(1) Bonds Similarly Secured cancelled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations;

(2) Bonds Similarly Secured paid or deemed to be paid in accordance with the provisions of Section 32 hereof; and

(3) Bonds Similarly Secured that have been mutilated, destroyed, lost, or stolen and replacement bonds have been registered and delivered in lieu thereof.

T. The term *Required Reserve* shall mean the total amount required to be accumulated and maintained in the Reserve Fund under the provisions of Section 14 hereof.

U. The term *Revenues* shall mean all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding restricted gifts, grants in aid of construction and any amounts received from drainage charges specifically provided by ordinance for contribution to the funding of future drainage system construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established for the payment and security of the Bonds Similarly Secured and other obligations payable solely from and secured only by a lien on and pledge of the Revenues of the System, and excluding those amounts subject to payment to the United States of America as rebate pursuant to section 148 of the Code.

V. The term *Stated Maturity* shall mean the annual principal payments of the Bonds payable on February 1 of each year, as set forth in Section 2 of this Ordinance.

W. The term *System or Municipal Drainage Utility System* shall mean all land, easements and interest in land, together with all structures, equipment and facilities used in draining benefitted property (within the meaning of the Act), including, but not limited to, bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses and excluding the property or entities exempted from the Act pursuant to Section 402.053 of the Act; provided, however, that notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not mean to include facilities of any kind which are declared not to be a part of the System and which are acquired or constructed by or on behalf of the City with the proceeds from the issuance of *Special Facilities Bonds*, which are hereby defined as being special revenue obligations of the City which are not payable from Revenues but which are payable from and equally and ratably secured by other liens on and pledges of any revenues, sources or payments, not pledged to the payment of the Bonds Similarly Secured including, but not limited to, special contract revenues or payments received from any other legal entity in connection with such facilities..

#### SECTION 10: Pledge.

A. The City hereby covenants and agrees that the Revenues of the System, with the exception of those in excess of the amounts required for the payment and security of the Bonds Similarly Secured, are hereby irrevocably pledged, to the payment and security of the Bonds and any Additional Bonds, if issued, including the establishment and maintenance of the special funds created and established by this Ordinance, all as hereinafter provided, and it is hereby ordained that such pledge of the Revenues securing the payment of the Bonds Similarly Secured and interest thereon shall constitute a first lien on such Revenues and be valid and binding in accordance with the terms hereof without any filing or recording thereof (except in the official records of the City) or physical delivery of such Revenues or further act by the City.

B. Chapter 1208, as amended, Texas Government Code, applies to the issuance of the Bonds Similarly Secured and the pledge of Revenues granted by the City under subsection (a) of this Section, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at anytime while the Bonds Similarly Secured are outstanding and unpaid such that the pledge of the Revenues granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Bonds Similarly Secured the perfection of the security interest in this pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in this pledge to occur.

SECTION 11: Rates and Charges. For the benefit of the Holders of the Bonds Similarly Secured and in accordance with the provisions of the Act and other applicable laws of the State of Texas, the City hereby expressly stipulates and agrees, while any of the Bonds Similarly Secured are Outstanding, to establish, maintain and impose drainage charges for facilities and services afforded by the System that are reasonably expected, on the basis of available

information and experience and with due allowance for contingencies, to produce Revenues in each Fiscal Year sufficient:

- (1) to pay the principal of and interest on the Bonds Similarly Secured and the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the Bonds Similarly Secured, and other obligations or evidences of indebtedness issued or incurred that are payable only from and secured solely by a lien on and pledge of the Revenues of the System,
- (2) to pay for all Operating and Maintenance Expenses,
- (3) in an amount equivalent to at least 1.25 times the annual Debt Service Requirements for the Fiscal Year on the Bonds Similarly Secured then Outstanding, and
- (4) to pay all other indebtedness payable from and/or secured in whole or in part by a lien on and pledge of the Revenues of the System.

SECTION 12: System Fund. The City hereby covenants and agrees that the Revenues of the System (excluding earnings and income derived from investments held in the Bond Fund and Reserve Fund) shall be deposited as collected to the credit of a fund maintained at the Depository, and known on the books and records of the City as the "Drainage Utility System Fund" (herein called the "*System Fund*"). All revenues deposited in the System Fund shall be pledged and appropriated to the extent required for the following uses and in the order of priority shown:

- First: To the payment of the amounts required to be deposited in the Bond Fund for the payment of Debt Service Requirements on the Bonds Similarly Secured as the same becomes due and payable.
- Second: To the payment of all necessary and reasonable Operating and Maintenance Expenses.
- Third: To the payment of the amounts required to be deposited in the Reserve Fund to establish and maintain the Required Reserve in accordance with the provisions of this Ordinance or any other ordinance relating to issuance of Bonds Similarly Secured, including payment of amounts, if any, pursuant to the terms of a Credit Facility as provided in Section 14 hereof.

Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be transferred to the City's general fund or used for any other purpose now or hereafter permitted by law.

SECTION 13: Bond Fund; Excess Bond Proceeds. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption, and retirement of the Bonds Similarly Secured, there shall be and is hereby created a special Fund to be designated "City of San Antonio Drainage Utility System Revenue Bond Interest and Sinking Fund" (the *Bond Fund*), which Fund shall be kept and maintained at the Depository, and money deposited in such Fund shall be used for no other purpose and shall be maintained as provided in Section 22. The

City covenants that there shall be deposited into the Bond Fund prior to each principal and interest payment date from the available Revenues an amount equal to one hundred per cent (100%) of the amount required to fully pay the interest on and the principal of the Bonds then falling due and payable, such deposits to pay maturing principal and accrued interest on the Bonds to be made in substantially equal monthly installments on or before the tenth day of each month, beginning on or before the tenth day of the month next following the delivery of the Bonds to the Purchasers. If the Revenues in any month are insufficient to make the required payments into the Bond Fund, then the amount of any deficiency in such payment shall be added to the amount otherwise required to be paid into the Bond Fund in the next month.

The required monthly deposits to the Bond Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Bond Fund and Reserve Fund is equal to the amount required to fully pay and discharge all outstanding Bonds (principal and interest) or, (ii) the Bonds are no longer Outstanding.

Accrued interest received from the Purchasers shall be taken into consideration and reduce the amount of the monthly deposits hereinabove required to be deposited into the Bond Fund from the Revenues of the System. Additionally, any proceeds of the Bonds, and investment income thereon, not expended for authorized purposes shall be deposited into the Bond Fund and shall be taken into consideration and reduce the amount of monthly deposits required to be deposited into the Bond Fund from the Revenues of the System.

**SECTION 14: Reserve Fund.** For purposes of accumulating and maintaining a reserve amount for the payment of the Bonds Similarly Secured, the City agrees and covenants to create and maintain a special fund or account on its books and records known as the "City of San Antonio Drainage Utility System Revenue Bond Reserve Fund" (the "*Reserve Fund*"). All moneys deposited to the credit of such Fund shall be held in a fund or account maintained at the Depository. All funds deposited to the credit of the Reserve Fund (excluding investment or deposit earnings and income which may be transferred to the System Fund established in Section 12 hereof during such periods as there is on deposit in the Reserve Fund the Required Reserve) shall be used solely for the payment of the principal of and interest on the Bonds Similarly Secured when (whether at maturity, upon a mandatory redemption date or any interest payment date) other funds available for such purposes are insufficient, and, in addition, may be used to the extent not required to maintain the "Required Reserve", to pay, or provide for the payment of, the final principal amount of a series of Bonds Similarly Secured so that such series of Bonds Similarly Secured is no longer deemed to be Outstanding.

Initially, the total amount to be accumulated and maintained in the Reserve Fund by reason of the issuance of the Bonds shall be an amount equal to the Average Annual Debt Service Requirements for the Bonds (calculated on a Fiscal Year basis), and hereinafter referred to as the "Required Reserve". Beginning on or before the 10th day of the month next following the delivery of the Bonds to the initial purchasers on or before the 10th day of each following month until the Required Reserve has been accumulated in said Fund, the City covenants and agrees to cause an amount to be deposited in the Reserve Fund equal to at least 1/60th of the Required Reserve.

When Additional Bonds are delivered or incurred, the Required Reserve shall be increased, if required, to an amount equal to the lesser of (i) the Average Annual Debt Service Requirements (calculated on a Fiscal Year basis) for all Bonds Similarly Secured then Outstanding, as determined on the date each series of Additional Bonds are delivered or incurred and annually following each principal payment date or redemption date for Bonds Similarly Secured, as the case may be, or (ii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder. Any additional amount required to be maintained in the Reserve Fund shall be so accumulated by the deposit in the Reserve Fund of all or any part thereof in cash immediately after the delivery of the then proposed Additional Bonds, or, at the option of the City, by the deposit of monthly installments, made on or before the 10th day of each month following the month of delivery of the then proposed Additional Bonds, of not less than 1/60th of the additional amount to be maintained in said Fund by reason of the issuance of the Additional Bonds then being issued (or 1/60th of the balance of the additional amount not deposited immediately in cash).

While cash and investments in the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund; but, if and when the Reserve Fund at any time contains less than the Required Reserve (other than as the result of the initial funding of the Required Reserve or issuance of Additional Bonds as provided in the preceding paragraph), the City covenants and agrees to cure the deficiency in the Required Reserve by making monthly deposits on or before the 10th day of each month to said Fund from the Revenues in amounts equal to not less than 1/60th of the then total Required Reserve to be maintained in said Fund until the total Required Reserve then to be maintained in said Fund has been fully restored. The City further covenants and agrees that, subject only to the payments to be made to the Bond Fund, the Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve and to cure any deficiency in such amounts as required by the terms of this Ordinance and any other ordinance pertaining to the issuance of Additional Bonds.

During such time as the Reserve Fund contains the total Required Reserve, the City may, at its option, withdraw all surplus in the Reserve Fund in excess of the Required Reserve and deposit such surplus in the System Fund.

The City, at its option and consistent with the provisions of this Section, may fund the Reserve Fund at the Required Reserve by purchasing a Credit Facility that will unconditionally obligate the insurance company or other entity to pay all, or any part thereof, of the Required Reserve in the event funds on deposit in the Bond Fund are not sufficient to pay the debt service requirements on the Bonds Similarly Secured. All ordinances adopted after the date hereof authorizing the issuance of Additional Bonds shall contain a provision to this effect. The City reserves the right to use Revenues of the System to fund the payment of periodic premiums on the Credit Facility and any repayment obligation incurred by the City (including interest) to the issuer of the Credit Facility, the payment of which will result in the reinstatement of such Credit Facility, prior to making payments required to be made to the Reserve Fund pursuant to the provisions of this Section to restore the balance in such fund to the Required Reserve for the Bonds Similarly Secured.



In the event a Credit Facility is issued to satisfy all or part of the City's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to exceed the Required Reserve, the City may transfer such excess amount to any fund or account established for the payment of or security for the Bonds Similarly Secured (including any escrow established for the final payment of any such obligations pursuant to Chapter 1207, as amended, Texas Government Code) or use such excess amount for any lawful purpose now or hereafter provided by law; provided, however, to the extent that such excess amount represents Bond proceeds, then such amount must be transferred to the Bond Fund.

Notwithstanding the foregoing provisions of this section, the requirement to maintain the Required Reserve in the Reserve Fund shall be suspended for such time as the Revenues for each Fiscal Year are equal to at least 1.75 times the Average Annual Debt Service Requirements. In the event that the Revenues for any Fiscal Year are less than 1.75 times the Average Annual Debt Service requirements, the City will be required to commence making the Required Reserve deposits as provided in this Section, and to continue such deposits until the Reserve Fund contains the Required Reserve or the Revenues in each of two Fiscal Years have been equal to not less than 1.75 times the Average Annual Debt Service Requirements.

#### SECTION 15: Deficiencies; Excess Revenues.

A. If on any occasion there shall not be sufficient Revenues of the System to make the required deposits into the Bond Fund and the Reserve Fund, then such deficiency shall be cured as soon as possible from the next available Revenues of the System, or from any other sources available for such purpose.

B. Subject to making the required deposits to the Bond Fund and the Reserve Fund in accordance with the provisions of this Ordinance, or any ordinance authorizing the issuance of Additional Bonds, the excess Revenues may be transferred to the City's general operating fund or used by the City for any lawful purpose.

SECTION 16: Payment of Bonds. While any of the Bonds are Outstanding, the Director of Finance (or other designated financial officer of the City) shall cause to be transferred to the Paying Agent/Registrar, from funds on deposit in the Bond Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly as each installment of interest and principal of the Bonds accrues or matures or comes due by reason of redemption prior to maturity; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the last business day next preceding the date of payment for the Bonds.

SECTION 17: Security for Funds. All money on deposit in the Funds or accounts for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and money on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 18: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the

event the City (a) defaults in the payments to be made to the Bond Fund or Reserve Fund or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, the Holders of any of the Bonds shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 19: Notices to Holders-Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class postage prepaid, to the address of each Holder as it appears in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds or Holders. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 20: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the City.

SECTION 21: Mutilated -Destroyed -Lost and Stolen Bonds. If (i) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (ii) there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchasers, the City shall execute and, upon the City's request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the

same Stated Maturity and interest rate and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Bond, pay such Bond.

Upon the issuance of any new Bond, or payment in lieu thereof, under this Section, the City may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses and charges (including attorney's fees and the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

#### SECTION 22: Covenants to Maintain Tax-Exempt Status.

A. Definitions. When used in this Section, the following terms have the following meanings:

*"Code"* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*"Computation Date"* has the meaning set forth in section 1.148-1(b) of the Regulations.

*"Gross Proceeds"* means any proceeds as defined in section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in section 1.148-1(c) of the Regulations, of the Bonds.

*"Investment"* has the meaning set forth in section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal

Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*“Yield” of*

(1) any Investment has the meaning set forth in section 1.148-5 of the Regulations; and

(2) the Bonds means the yield on the Bonds.

B. Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

C. No Private Use or Private Payments. Except to the extent that it will cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

D. No Private Loan. Except to the extent that it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property

acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

E. Not to Invest at Higher Yield. Except to the extent that it will cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, materially exceeds the Yield of the Bonds.

F. Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

G. Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

H. Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the

amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) of the Regulations.

I. Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

J. Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, City Clerk, Director of Finance, or City Attorney, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

K. Bonds Not Hedge Bonds.

(1) The City reasonably expects to spend at least 85% of the spendable proceeds of the Bonds within three years after such Bonds are issued.

(2) Not more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

SECTION 23: Investments. Funds held in any Fund or account created, established, or maintained pursuant to this Ordinance, at the option of the City, shall be invested as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, or any other law, and secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of

America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured, or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Association, or Federal Housing Association; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund or account will be available at the proper time or times. Such investments (except State and Local Government Series investments held in book entry form, which shall at all times be valued at cost) shall be valued in terms of current market value within 45 days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 30 days of the date of passage of each ordinance authorizing the issuance of any Additional Bonds. All interest and income derived from deposits and investments in the Bond Fund immediately shall be credited to, and any losses debited to, the Bond Fund. All interest and interest income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 14, be credited to and deposited in the System Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

SECTION 24: Issuance of Additional Bonds. Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the City reserves the right to issue, from time to time as needed, Additional Bonds for any authorized purpose, including the issuance of refunding bonds. Such Additional Bonds may be issued in such form and manner as now or hereafter authorized by the laws of the State of Texas for the issuance of evidences of indebtedness or other instruments, and should new methods or financing techniques be developed that differ from those now available and in normal use, the City reserves the right to employ the same in its financing arrangements provided only that the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(1) The Director of Finance of the City or the City Manager shall have executed a certificate stating (a) that, to the best of his/her knowledge and belief, the City is not then in default as to any covenant, obligation or agreement contained in any ordinance or other proceeding relating to any obligations of the City payable from and secured by a lien on and pledge of the Revenues of the System that would materially affect the security or payment of such obligations and (b) either (i) payments into all special Funds maintained for the payment and security of all outstanding obligations payable from and secured by a lien on and pledge of the Revenues of the System have been made and that the amounts on deposit in such special Funds equal or exceed the amounts then required to be on deposit therein or (ii) the application of the proceeds of sale of such obligations then being issued will cure any such deficiency.

(2) The Additional Bonds shall be scheduled to mature or be payable as to principal on February 1 or August 1 (or both) in each year the same are to be outstanding or during the term thereof.

(3) The City has secured a certificate of the City Manager or Director of Finance of the City to the effect that, according to the books and records of the City, the

Revenues for the last completed Fiscal Year, or for 12 consecutive months out of the 18 months, immediately preceding the date of issuance of the Additional Bonds (the date of issuance being the date of initial delivery of all or a portion of the Additional Bonds to the initial purchasers) are at least equal to 1.25 times the Average Annual Debt Service Requirements for all Outstanding Bonds Similarly Secured after giving effect to the issuance of the Additional Bonds then being issued. In making a determination of the Revenues, the Director of Finance or City Manager may take into consideration a change in the charges for services afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which Revenues are determined and, for purposes of satisfying the above Revenues test, make a pro forma determination of the Revenues of the System for the period of time covered by his/her certification based on such change in charges being in effect for the entire period covered by the certificate.

SECTION 25: Refunding Bonds. The City reserves the right to issue refunding bonds to refund all or any part of the Bonds Similarly Secured (pursuant to any law then available) upon such terms and conditions as the City Council of the City may deem to be in the best interest of the City and its inhabitants, and if less than all such Bonds Similarly Secured then outstanding are refunded, the conditions precedent prescribed (for the issuance of Additional Bonds) set forth in subparagraph (3) of Section 24 hereof shall be satisfied and the certificate of the Accountant required in subparagraph (3) shall give effect to the Debt Service Requirements of the proposed refunding bonds (and shall not give effect to the Debt Service Requirements of the Bonds Similarly Secured being refunded following their cancellation or provision being made for their payment).

SECTION 26: Obligations of Inferior Lien and Pledge. The City hereby reserves the right to issue obligations payable from and secured by a lien on and pledge of the Net Revenues of the System, junior and subordinate in rank and dignity to the lien and pledge securing the payment of the Bonds Similarly Secured, as may be authorized by the laws of the State of Texas.

SECTION 27: Insurance. In regard to the operations and properties of the System, the City also agrees to carry and maintain liability and property damage insurance of the kind and in the amounts customarily carried by municipal corporations in Texas on such kind of properties; provided, however, the City in lieu of and/or in combination with carrying such insurance may self-insure against such perils and risks by establishing self-insurance reserves. Annually each year not later than the end of each Fiscal Year, the City shall prepare or cause to be prepared by a person competent and knowledgeable in such matters a written evaluation of the adequacy of such self-insurance and/or insurance coverage and of any recommended changes in regard to the City's insurance/self-insurance policies, practices and procedures.

SECTION 28: Sale or Lease of Properties. The City, to the extent and in the manner authorized by law, may sell or exchange for consideration representing the fair value thereof, as determined by the City Council of the City, any property of the System which is obsolete, damaged or worn out or otherwise unsuitable. The proceeds of any sale of properties of the System shall be deposited in the System Fund.

SECTION 29: Records and Accounts. The City hereby covenants and agrees that while any Bonds remain Outstanding, it will keep and maintain separate and complete records and



accounts pertaining to the receipt and disbursement of Revenues of the System in accordance with generally accepted accounting principles, as well as an inventory or list of System properties. The Holders of any Bonds or any duly authorized agent or agents of such Holders shall have the right at all reasonable times to inspect such records, accounts and data relating thereto and the inventory of System properties. The City further agrees that annually an audit of the books and accounts of the System shall be made by an independent firm of Certified Public Accountants. Each such audit, in addition to whatever other matters may be thought proper by the accountant, shall particularly include the following:

- (1) A statement of the receipts and disbursements of the System for such Fiscal Year.
- (2) A balance sheet for the System as of the end of such Fiscal Year.
- (3) The Accountant's comments regarding the manner in which the City has carried out the requirements of this Ordinance and any other ordinance authorizing the issuance of Additional Bonds and his/her recommendations for any changes or improvements in the operations, records and accounts of the System.

Copies of each annual audit shall be furnished to the Executive Director of the Municipal Advisory Council of Texas at his office in Austin, Texas, and, upon request, to the initial purchasers of the Bonds and subsequent Holders of 15% or more in principal amount of the Bonds. Such required annual audit of the financial records and accounts of the City shall be completed, insofar as possible, within 120 days following the close of each Fiscal Year and may be a part of the annual audit made of all City records and accounts.

SECTION 30: Special Covenants. The City further covenants and agrees by and through this Ordinance as follows:

- (1) It has the lawful power to pledge the Revenues of the System to the payment of the Bonds to the extent provided herein and has lawfully exercised said power under the Constitution and laws of the State of Texas, including the Act, and that the Bonds issued hereunder, together with the Additional Bonds, shall be ratably secured in such manner that no one bond shall have preference over any other bond of said issues.
- (2) The Revenues of the System have not been in any manner pledged or encumbered to the payment of any debt or obligation of the City or the System, save and except for the Bonds.
- (3) To exercise and pursue with due diligence available remedies provided by law for the collection of delinquent drainage charges, including the power under Section 402.050 of the Act to discontinue all utility services, particularly water and sewer services provided by the City to a user of benefitted property who is delinquent in the payment of drainage charges.

The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

SECTION 31: Special Obligations. The Bonds are special obligations of the City payable from the pledged Revenues and the Holders thereof shall never have the right to demand payment thereof out of funds raised or to be raised by taxation.

SECTION 32: Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the lien on and pledge of the Revenues of the System under this Ordinance and all other obligations of the City to the Holders shall thereupon cease, terminate, and become void and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of money or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

Any money so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such money has been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date of the Bonds, such money was deposited and is held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem defeased Bonds that is made in conjunction with the payment arrangements specified in subsection (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the City expressly reserves the right to call the defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Bonds immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased

debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Bonds, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Bonds.

**SECTION 33: Ordinance a Contract - Amendments - Outstanding Bonds.** The City acknowledges that the covenants and obligations of the City herein contained are a material inducement to the purchase of the Bonds. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City while any Bond remains Outstanding except as permitted in this Section. The City, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein and to provide additional security for the payment of the Bonds Similarly Secured. In addition, the City may, with the written consent from the owners holding a majority in aggregate principal amount of the Bonds Similarly Secured then Outstanding (excluding Bonds Similarly Secured acquired by or held for the account of the City) affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the written consent of all Holders of Bonds then Outstanding, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds or Bonds Similarly Secured, as the case may be, required to be held for consent to any such amendment, addition, or rescission.

**SECTION 34: Sale of the Bonds; Use of Bond Proceeds.** The Bonds authorized by this Ordinance are hereby sold by the City to Siebert Brandford Shank & Co., LLC as the authorized representative of a group of underwriters (the *Purchasers*) in accordance with the provisions of a Purchase Contract, dated May 1, 2003 (the *Purchase Contract*), attached hereto as Exhibit B and incorporated herein by reference as a part of this Ordinance for all purposes. The Initial Bond shall be registered in the name of Siebert Brandford Shank & Co., LLC The Mayor is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City and as the act and deed of this City Council, and in regard to the approval and execution of the Purchase Contract, the City Council hereby finds, determines and declares that the representations, warranties, and agreements of the City contained in the Purchase Contract are true and correct in all material respects and shall be honored and performed by the City. Delivery of the Bonds to the Purchasers shall occur as soon as practicable after the adoption of this Ordinance, upon payment therefor in accordance with the terms of the Purchase Contract.

Proceeds from the sale of the Bonds shall be applied as follows:

- (1) Accrued interest received from the Purchasers shall be deposited into the Bond Fund.
- (2) The balance of the proceeds (including an original issue premium of \$813,277.95) derived from the sale of the Bonds (after paying costs of issuance) shall be deposited into the special construction account or accounts created for the projects to be

constructed with the bond proceeds in accordance with Section 37 hereof. This special construction account shall be established and maintained at the Depository and shall be invested in accordance with the provisions of Section 23 of this Ordinance. Interest earned on the proceeds of the Bonds pending completion of the projects financed with such proceeds shall be accounted for, maintained, deposited, and expended as permitted by the provisions of Chapter 1201, as amended, Texas Government Code, or as required by any other applicable law. Thereafter, such amounts shall be expended in accordance with Section 13.

**SECTION 35: Control and Custody of Bonds.** The Mayor shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Bonds, and shall take and have charge and control of the Initial Bond(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the initial purchasers.

Furthermore, the Mayor, Mayor Pro Tem, City Clerk, City Manager, Assistant City Manager and Director of Finance, any one or more of said officials, are hereby authorized and directed to furnish and execute such agreements, documents and certifications relating to the City and the issuance, sale and delivery of the Bonds, including certifications as to facts, estimates, circumstances and reasonable expectations pertaining to the use, expenditure and investment of the proceeds of the Bonds, as may be necessary for the approval of the Attorney General, the registration by the Comptroller of Public Accounts and the delivery of the Bonds to the Purchasers, and, together with the City's bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the Purchasers and the initial exchange thereof for definitive Bonds.

**SECTION 36: Official Statement.** The City Council ratifies and confirms its prior approval of the form and content of the Official Statement prepared in the initial offering and sale of the Bonds and hereby approves the form and content of any addenda, supplement, or amendment thereto. The use of such Official Statement in the reoffering of the Bonds by the Purchasers is hereby approved and authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

**SECTION 37: Construction Fund.** The proceeds of sale of the Bonds, excluding the accrued interest and premium, if any, received from the Purchasers shall be deposited in a Series 2003 Drainage Utility System Construction Fund (the *Construction Fund*) maintained at the Depository. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Bond Fund as shall be determined by the City Council. Accrued interest and premium, if any, received from the Purchasers as well as all excess proceeds of sale of the Bonds, including investment earnings, remaining after completion of all authorized projects or purposes and amounts, if any, required to be rebated to the federal government, shall be deposited to the credit of the Bond Fund. All money deposited to the credit of the Construction Fund, pending disbursement and expenditure for authorized projects and purposes, shall be and is hereby pledged to the payment of the

principal of and interest on the Bonds; provided, however, the pledge and encumbrance of the proceeds of sale of the Bonds deposited to the credit of the Construction Fund shall be terminated and released on amounts withdrawn and disbursed by the City without filing any release or further action by the City other than the act of withdrawing or disbursing such amount from the Construction Fund.

SECTION 38: Printed Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to its being furnished a final opinion of Fulbright & Jaworski L.L.P. and Escamilla & Poneck, Inc., Attorneys at Law, approving the Bonds as to their validity, said opinions to be dated and delivered as of the date of initial delivery and payment for the Bonds. Printing of a true and correct reproduction of said opinions on the reverse side of each of the Bonds is hereby approved and authorized.

SECTION 39: Notices to Holders-Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 40: Cancellation. All Bonds surrendered for payment, redemption, transfer or exchange, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the City.

SECTION 41: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor Co-Bond Counsel are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 42: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, the Purchasers, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its

provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, the Purchasers, and the Holders.

SECTION 43: Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 44: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 45: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 46: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 47: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 48: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 49: Authorization of Paying Agent/Registrar Agreement. The City Council of the City hereby finds and determines that it is in the best interest of the City to authorize the execution of a Paying Agent/Registrar Agreement pertaining to the registration, transferability, and payment of the Bonds. A copy of the Paying Agent/Registrar Agreement is attached hereto as Exhibit A and is incorporated herein by reference as fully as if recopied in its entirety in this Ordinance.

SECTION 50: Incorporation of Preamble Recitals. The recitals contained in the preamble to this Ordinance are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council of the City.

SECTION 51: Book-Entry Only System.

It is intended that the Bonds initially be registered so as to participate in a securities depository system (the *DTC System*) with the Depository Trust Company, New York, New York, or any successor entity thereto (the *DTC*), as set forth herein. Each Stated Maturity of the Bonds shall be issued (following cancellation of the Initial Bonds described in Section 7) in the form of a separate single definitive Bond. Upon issuance, the ownership of each such Bond shall be

registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. The City and the Paying Agent/Register are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit C (the *Representation Letter*).

With respect to the Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Bonds from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds (an *Indirect Participant*). Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Bonds, or (ii) the delivery to any Depository Participant or any Indirect Participant or any other person, other than a Holder of a Bond, of any amount with respect to principal of, premium, if any, or interest on the Bonds. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a Bond certificate evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the Holder, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

In the event that (a) the City determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the City determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the City shall notify the Paying Agent/Registrar, DTC, and DTC Participants of the availability within a reasonable period of time through DTC of Bond certificates, and the Bonds shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. At that time, the City may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the City, or such depository's agent or designee, and if the City and the Paying Agent/Registrar do not select such alternate securities depository system then the Bonds may be registered in whatever name or names the Holders of Bonds transferring or exchanging the Bonds shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

**SECTION 52: Unavailability of Authorized Publication.** If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Ordinance shall be given in such other manner

and at such time or times as in the judgment of the City or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Ordinance be deemed to be in compliance with the requirements for publication thereof.

SECTION 53: No Recourse Against City Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Bond.

SECTION 54: Continuing Disclosure Undertaking.

A. Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

“*MSRB*” means the Municipal Securities Rulemaking Board.

“*NRMSIR*” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“*Rule*” means SEC Rule 15c2-12, as amended from time to time.

“*SEC*” means the United States Securities and Exchange Commission.

“*SID*” means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

B. Annual Reports.

The City shall provide annually to each NRMSIR and any SID, within six months after the end of each fiscal year ending in or after 2003, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 36 of this Ordinance, being the information described in Exhibit D hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit D hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID, with the financial information and operating data and will file the annual audit report when and if same becomes available.

If the City changes its fiscal year, it will notify each NRMSIR and any SID of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.



The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

C. Material Event Notices.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

- (1) Principal and interest payment delinquencies;
  - (2) Non-payment related defaults;
  - (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
  - (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
  - (5) Substitution of credit or liquidity providers, or their failure to perform;
  - (6) Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
  - (7) Modifications to rights of holders of the Bonds;
  - (8) Bond calls;
  - (9) Defeasances;
  - (10) Release, substitution, or sale of property securing repayment of the Bonds;
- and
- (11) Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with this Section by the time required by this Section.

D. Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section with respect to the City and the Bonds while, but only while, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an “obligated person”.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The City may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the City also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling the Bonds in the primary offering of the Bonds, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in

narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 55: Further Procedures. The officers and employees of the City are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, the Purchase Contract, and the Official Statement. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Manager, the Director of Finance, and Co-Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Texas Attorney General's office. In case any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 56: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 57: Insurance Provisions. The following provisions shall be effective as long as any of the Bonds are insured by the Insurer pursuant to the Insurance Policy:

A. In the event that, on the second Business Day, and again on the Business Day, prior to the payment date on the Bonds, the Paying Agent/Registrar has not received sufficient money to pay all principal of and interest on the Bonds due on the second following or following, as the case may be, Business Day, the Paying Agent/Registrar shall immediately notify the Insurer or its designee on the same Business Day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

B. If the deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent/Registrar shall so notify the Insurer or its designee.

C. In addition, if the Paying Agent/Registrar has notice that any Holder has been required to disgorge payments of principal or interest on the Bond to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes a voidable preference to such Holder within the meaning of any applicable bankruptcy laws, then the Paying Agent/Registrar shall notify the Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

D. The Paying Agent/Registrar is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Holders of the Bonds as follows:

(1) If and to the extent there is a deficiency in amounts required to pay interest on the Bonds, the Paying Agent/Registrar shall (a) execute and deliver to State Street Bank and Trust Company, N.A., or its successors under the Insurance Policy (the "Insurance Paying Agent/Registrar"), in form satisfactory to the Insurance Paying Agent/Registrar, an instrument appointing the Insurer as agent for such Holders in any legal proceeding related to the payment of such interest and an assignment to the Insurer of the claims for interest to which such deficiency relates and which are paid by the Insurer, (b) receive as designee of the respective Holders (and not as Paying Agent/Registrar) in accordance with the tenor of the Insurance Policy payment from the Insurance Paying Agent/Registrar with respect to the claims for interest so assigned, and (c) disburse the same to such respective Holders; and

(2) If and to the extent of a deficiency in amounts required to pay principal of the Bonds, the Paying Agent/Registrar shall (a) execute and deliver to the Insurance Paying Agent/Registrar in form satisfactory to the Insurance Paying Agent/Registrar an instrument appointing the Insurer as agent for such Holder in any legal proceeding relating to the payment of such principal and an assignment to the Insurer of any of the Bond surrendered to the Insurance Paying Agent/Registrar of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent/Registrar and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent/Registrar is received), (b) receive as designee of the respective Holders (and not as Paying Agent/Registrar) in accordance with the tenor of the Insurance Policy payment therefor from the Insurance Paying Agent/Registrar, and (c) disburse the same to such Holders.

E. Payments with respect to claims for interest on and principal of Bonds disbursed by the Paying Agent/Registrar from proceeds of the Insurance Policy shall not be considered to discharge the obligation of the City with respect to such Bonds, and the Insurer shall become the owner of such unpaid Bond and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

F. Irrespective of whether any such assignment is executed and delivered, the City and the Paying Agent/Registrar hereby agree for the benefit of the Insurer that,

(1) They recognize that to the extent the Insurer makes payments, directly or indirectly (as by paying through the Paying Agent/Registrar), on account of principal of or interest on the Bonds, the Insurer will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the City, with interest thereon as provided and solely from the sources stated in this Ordinance and the Bonds; and

(2) They will accordingly pay to the Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Insurance Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in this Ordinance and the

Bond, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Bonds to Holders, and will otherwise treat the Insurer as the owner of such rights to the amount of such principal and interest.

G. In connection with the issuance of additional bonds, the City shall deliver to the Insurer a copy of the disclosure document, if any, circulated with respect to such additional bonds.

H. Copies of any amendments made to the documents executed in connection with the issuance of the Bonds which are consented to by the Insurer shall be sent to Standard & Poor's Corporation.

I. The Insurer shall receive notice of the resignation or removal of the Paying Agent/Registrar and the appointment of a successor thereto.

J. The Insurer shall receive copies of all notices required to be delivered to Holders and, on an annual basis, copies of the City's audited financial statements and annual budget.

K. The Insurer, acting alone, shall have the right to direct all remedies in the event of a default as disclosed in Section 18.

L. Notices: Any notice that is required to be given to a holder of the Bond or to the Paying Agent/Registrar pursuant to the Ordinance shall also be provided to the Insurer. All notices required to be given to the Insurer under the Ordinance shall be in writing and shall be sent by registered or certified mail addressed to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504, Attention: Insured Portfolio Management.

SECTION 58: Effective Date. The effective date of this ordinance shall be governed by the provisions of Section 59 hereof if this ordinance is adopted by the affirmative vote of at least eight members of the City Council, otherwise, the same shall take effect on the tenth day after the date of its adoption by the City Council.

SECTION 59: Emergency. By reason of the urgent necessity to issue the Bonds as soon as possible to enable the City to proceed with needed public improvements, an emergency is hereby declared to exist making it necessary to the preservation of the public peace, property, health and safety that this ordinance become effective immediately upon its passage, and it is so enacted.

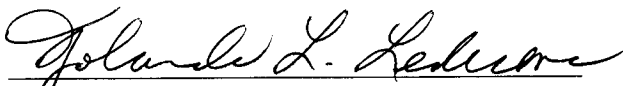
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PASSED AND ADOPTED by an affirmative vote of 8 members of the City Council of the City of San Antonio, Texas, this the 1st day of May, 2003.

CITY OF SAN ANTONIO

  
\_\_\_\_\_  
Mayor **EDWARD D. GARZA**

ATTEST:

  
\_\_\_\_\_  
Acting City Clerk

(CITY SEAL)

I, the undersigned, City Attorney of the City of San Antonio, Texas, hereby certify that I read, passed upon, and approved as to form the foregoing Ordinance prior to its adoption and passage as aforesaid.

  
\_\_\_\_\_  
Andrew Martin, City Attorney,  
City of San Antonio, Texas

Exhibit A - Paying Agent/Registrar Agreement  
Exhibit B - Purchase Contract  
Exhibit C - DTC Letter of Representations  
Exhibit D - Description of Annual Financial Information

**EXHIBIT A**

**PAYING AGENT/REGISTRAR AGREEMENT**

SEE TAB NO. \_\_

**EXHIBIT B**

**PURCHASE CONTRACT**

SEE TAB NO. \_\_



**EXHIBIT C**

DTC LETTER OF REPRESENTATIONS

SEE TAB NO. \_\_

## **EXHIBIT D**

### **DESCRIPTION OF ANNUAL FINANCIAL INFORMATION**

The following information is referred to in Section 54 of this Ordinance.

#### **Annual Financial Statements and Operating Data**

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The City's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the City appended to the Official Statement as Appendix C, but for the most recently concluded fiscal year.

2. Tables 1 through 3 in the Official Statement.

#### **Accounting Principles**

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.